

Volume I
Chapter 730

Handbook of Procedures for Providing
Reasonable Accommodations

Handbook H-730
Date: September 10, 2001

PROCEDURES FOR PROVIDING REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES

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FORMS:

- (1) Request for Reasonable Accommodation (IBWC Form 392)
- (2) Denial of Reasonable Accommodation Request (IBWC Form 394)
- (3) Reasonable Accommodation Information Reporting Form (IBWC Form 390)

I. POLICY ON REASONABLE ACCOMMODATION

The USIBWC's policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973. Under the law, federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship. The USIBWC is committed to providing reasonable accommodations to its employees and applicants for employment in order to assure that individuals with disabilities enjoy full access to equal employment opportunity at the USIBWC.

The USIBWC provides reasonable accommodations:

when an applicant with a disability needs an accommodation in order to be considered for a job;

when an employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and

when an employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.

The USIBWC will process requests for reasonable accommodation and, where appropriate, provide reasonable accommodations in a prompt, fair and efficient manner.

DEFINITION OF KEY TERMS

Reasonable Accommodation: Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.

Qualified Individual with a Disability: An individual with a disability is qualified if (1) s/he satisfies the requisite skill, experience, education, and other job-related requirements of the position and (2) s/he can perform the essential functions of the position, with or without reasonable accommodation.

Essential Functions: Those job duties that are fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function can be considered "essential" if, the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

Reassignment: Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation.

Reassignments are made only to vacant positions at or below the employee's current grade level or equivalent. Employees must be qualified for the new position. If the employee is qualified for the position, s/he will be reassigned to the job and will not have to compete for it.

Undue Hardship: If a specific type of reasonable accommodation causes significant difficulty or expense, the USIBWC does not have to provide that particular accommodation. Determination of undue hardship is made on a case-by-case basis, considering factors that include the nature, cost and the impact of the reasonable accommodation on the operations of the agency.

II. REQUESTS FOR REASONABLE ACCOMMODATION

A request for reasonable accommodation is a statement that an individual needs an adjustment/change at work, in the application process, or in a benefit or privilege of employment for reason(s) related to a medical condition. The reasonable accommodation process begins as soon as the request for accommodation is made. If medical documentation is required to confirm the need and the type of accommodation, the process begins as soon as the documentation is received .

An individual with a disability may request a reasonable accommodation whenever s/he chooses, even if s/he has not previously disclosed the existence of a disability. Any USIBWC employee or applicant may consult the EEO officer (1) for further information or assistance in connection with requesting or processing a request for reasonable accommodation.

An employee may request a reasonable accommodation from his/her supervisor orally or in writing by completing and submitting USIBWC Form 392. If the request is oral it must be followed up by completing IBWC form 392, "Confirmation of Request".

An applicant may request a reasonable accommodation orally or in writing from any Human Resources (HR) employee with whom the applicant has contact in connection with the application process. The HR employee shall provide USIBWC form 392 to the applicant, this form will be forwarded to the HR supervisor. The Human Resources Office is responsible for training staff that is involved in the application process to recognize requests for reasonable accommodation and to handle them appropriately.

A family member, health professional, or other representative may request an accommodation on behalf of a USIBWC employee or applicant. The request should go to the same person to whom the employee or applicant would make the request.

The EEO officer and the Safety and Occupational Health manager will be available, as needed, to provide assistance to employees and decision makers in processing requests.

All decision makers must have designated back-ups to continue receiving, processing, and providing reasonable accommodations when the decision maker is unavailable. Decision makers should ensure that individuals know who has been designated as back-up. The time frames discussed in Section VI, below, will not be suspended or extended because of the unavailability of a decision maker. The back-up for a supervisor is his/her supervisor.

III. DOES THE INDIVIDUAL REQUESTING THE ACCOMMODATION HAVE A DISABILITY? REQUESTS FOR MEDICAL INFORMATION

The USIBWC is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. In some cases the disability and need for accommodation will be obvious or otherwise already known to the decision maker. In these cases, the USIBWC will not seek any further medical information. However, when a disability and/or need for reasonable accommodation is not obvious or otherwise already known to the decision maker, the USIBWC may require, if it chooses, that the individual provide reasonable documentation about the disability and his or her functional limitations.

If a supervisor or other decision maker believes that medical information is necessary in order to evaluate a request for reasonable accommodation, s/he will make a request to the employee to provide/obtain the medical information.

If a determination is made to seek medical information, the USIBWC will request information sufficient to substantiate that the individual has a Rehabilitation Act disability and needs the reasonable accommodation requested, but will not ask for unrelated documentation. The USIBWC will seek information or documentation about the disability and/or functional limitations from the individual, and/or ask the individual to obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. In order to get the most helpful information, all requests for information should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.

If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the USIBWC to determine whether an accommodation is appropriate, the decision maker may ask for further information.

If further information is required, the decision maker must first explain to the individual seeking the accommodation, in specific terms, why the information which has been provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request. The individual may then ask the health care or other appropriate professional to provide the missing information. (See Section X for instructions on storage of this information.)

The USIBWC has the right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

The failure to provide appropriate documentation or to cooperate in the USIBWC's efforts to obtain such documentation can result in a denial of the reasonable accommodation.

IV. THE INTERACTIVE PROCESS

The next step is for the parties to begin the interactive process to determine what, if any, accommodation should be provided. The individual requesting the accommodation and the USIBWC decision maker must talk to each other about the request, the process for determining whether an accommodation will be provided, and potential accommodations.

Communication is a priority throughout the entire process. The USIBWC decision maker will have the principal responsibility for identifying possible accommodations. S/he will take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate to the extent possible in helping to identify an effective accommodation. The EEO officer is also available to provide assistance.

As the first step, the USIBWC decision maker will: (1) explain to the applicant or employee that s/he will be making the decision on the request; and (2) describe what will happen in the processing of the request. This initial discussion should occur as soon as possible.

When a request for accommodation is made by a third party, the decision maker should, if possible, confirm with the applicant or employee with a disability that s/he, in fact, wants a reasonable accommodation before proceeding. It may not be possible to confirm the request if the employee has, for example, been hospitalized in an acute condition. In this situation, the USIBWC will process the third party's request and will consult directly with the individual needing the accommodation as soon as it is practicable.

On-going communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation which should be provided are clear, extensive discussions are not necessary. Even so, the decision maker and requesting individual should talk to each other to make sure that there is a full exchange of relevant information.

The decision maker or any other the USIBWC official who receives information in connection with a request for reasonable accommodation may share information connected with the request with other agency officials only when the agency official(s) need to know the information in order to make determinations on a reasonable accommodation request. See Section V for specific rules governing the confidentiality of medical information.

For example, the Information Management Division (IMD) will typically be consulted in connection with requests for adaptive equipment for computers. However, IMD has no need to know any information about the medical condition of the person seeking the accommodation. It only needs to know his or her functional limitations as these limitations affect technology needs. There are specific considerations in the interactive process when responding to a request for

reassignment.

Reassignment will only be considered if no accommodations are available to enable the individual to perform his or her current job, or if the only effective accommodation would cause undue hardship.

In considering whether there are positions available for reassignment, the supervisor will work with the Human Resources office (HR) and the individual requesting the accommodation to identify: (1) all vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions which HR has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The agency will first focus on positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is no vacant equivalent position, the USIBWC will consider vacant lower level positions for which the individual is qualified.

Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, the USIBWC will not pay for the employee's relocation costs.

V. CONFIDENTIALITY REQUIREMENTS REGARDING MEDICAL INFORMATION OBTAINED IN THE REASONABLE ACCOMMODATION PROCESS

Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information, including information about functional limitations and reasonable accommodation needs, the USIBWC obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. Any USIBWC employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The EEO officer will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R. 1611. This information may be disclosed only as follows:

- supervisors, managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical information should only be disclosed if strictly necessary.
- first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment;
- government officials may be given information necessary to investigate the agency's

- compliance with the Rehabilitation Act; and
- the information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers.

Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

VI. TIME FRAMES FOR PROCESSING REQUESTS AND PROVIDING REASONABLE ACCOMMODATIONS

The USIBWC will process requests for reasonable accommodation and provide accommodations, where they are appropriate, in as short a time frame as reasonably possible. The USIBWC recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information.

- A. Expedited processing: In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a time frame that is shorter than the 15 or 20 business days discussed below. This includes where a reasonable accommodation is needed:
- *to enable an applicant to apply for a job.* Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the Human Resources Office supervisor may need to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.
 - *to enable an employee to attend a meeting scheduled to occur shortly.* For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.
- B. If a request for an accommodation can be processed by the requesting employee's supervisor, no supporting medical information is required, and no extenuating circumstances apply, the request shall be processed and the accommodation, if granted, provided in no more than 15 business days from the date the supervisor receives the request, and sooner, if possible. Since decision makers may need the full 15 days to engage in the interactive process and collect all relevant information about possible accommodations, they should not delay beginning this process. Failure to meet this time frame solely because a decision maker delayed processing the request is not an extenuating circumstance. (See next page for information on "extenuating circumstances.")
- If the decision maker believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the functional limitations, the decision maker will make such request to the requester making the accommodation request as soon as possible after his or her receipt of the request for accommodation, but before the expiration of the 15-day period. The

USIBWC recognizes that the need for documentation may not become apparent until after the interactive process has begun.

- If medical documentation is requested, the accommodation, if granted, will be provided within 15 business days from the date the decision maker receives the relevant medical documentation information.

Examples of accommodations which can easily be provided within this 15-day time frame include:

- An employee with diabetes who sits in an open area asks for four breaks a day to test his/her blood sugar levels so that she may do these tests in private.
- An employee who takes anti-depressants which make it hard for him/her to get up in time to get to the office at 9:00, requests that s/he be allowed to start work at 10:00 and still put in an 8 hour day.
- A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read and he needs more time to prepare.

C. Extenuating Circumstances: These are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. It is the USIBWC's policy that extensions based on extenuating circumstances should be limited to circumstances where they are strictly necessary. All USIBWC staff are expected to act as quickly as possible in processing requests and providing accommodations. The following are examples of extenuating circumstances:

- There is an outstanding initial or follow-up request for medical information, or the decision maker is evaluating medical information which has been provided.
- The purchase of equipment may take longer than 15 or 20 business days because of requirements under the Federal Acquisition Regulation.
- Equipment must be back-ordered, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
- The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before the USIBWC buys it.
- New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.

"Extenuating circumstances" covers limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For example, the USIBWC may not delay processing or providing an accommodation because a particular staff member is unavailable. All decision makers must have a designated back-up.

Where extenuating circumstances are present, **the decision maker must notify the individual of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected.** Any further developments or changes

should also be communicated promptly to the individual.

- If there is a delay in providing an accommodation which has been approved, the decision maker must investigate whether temporary measures can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, the decision maker may provide measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if: (1) they do not interfere with the operations of the Agency; and (2) the employee is clearly informed that they are being provided only on a temporary, interim basis.
- For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.

If a delay is attributable to the need to obtain or evaluate medical documentation and the USIBWC has not yet determined that the individual is entitled to an accommodation, the USIBWC may also provide an accommodation on a temporary basis. In such a case, the decision maker will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

USIBWC decision makers who approve such temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps to secure the permanent accommodation are being taken.

VII. GRANTING A REASONABLE ACCOMMODATION REQUEST

As soon as the decision maker determines that a reasonable accommodation will be provided, that decision should be immediately communicated to the individual. If the accommodation cannot be provided immediately, the decision maker must inform the individual of the projected time frame for providing the accommodation. This notice does not need to be in writing but the decision maker should keep a record of the date and time of the discussion.

VIII. DENIAL OF REASONABLE ACCOMMODATION REQUEST

As soon as the decision maker determines that a request for reasonable accommodation will be denied, s/he must fill out the attached "Denial of Request" form and give it to the individual who requested the accommodation. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. If the decision maker has denied a specific requested accommodation, and offered to make a different accommodation in its place which was not agreed to during the interactive process, the denial notice should explain the reasons for the denial of the requested accommodation and the reason the decision maker believes that the chosen

accommodation will be effective. Reasons for the denial of a request for reasonable accommodation may include the following:

- The requested accommodation would not be effective.
- Providing the requested accommodation would result in undue hardship. Before reaching this determination, the decision maker must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided. A determination of undue hardship means that the Commission finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of the USIBWC's operations.
- Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
- The requested accommodation would require the removal of an essential function.
- The requested accommodation would require the lowering of a performance or production standard.

The written notice of denial also informs the individual that s/he has the right to file an EEO complaint and may have rights to pursue MSPB and union grievance procedures. The notice also explains EEO's procedures available for informal dispute resolution.

IX. INFORMAL DISPUTE RESOLUTION

- ! Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation. If an individual wishes reconsideration, s/he should first ask the decision maker to reconsider the decision. The individual may present additional information in support of his/her request. The decision maker will respond to the request for reconsideration within 5 business days.
 - If the decision maker was the supervisor, and s/he does not reverse the decision, the individual can go up the Chain of Command and ask for reconsideration of the decision. A response to this request will be provided within ten business days.
 - If the decision maker is the Departmental manager, and s/he does not reverse the decision, the individual can ask the Commissioner to do so. The USIBWC Commissioner will respond to this request within 10 business days.

Pursuing any of the informal dispute resolution procedures identified above, including seeking reconsideration from the decision maker and appealing to the next person in the decision maker's chain of command, does not affect the time limits for initiating statutory and collective bargaining claims. An individual's participation in any or all of these informal dispute resolution processes does not satisfy the requirements for bringing a claim under EEO, MSPB, or union

grievance procedures.

X. INFORMATION TRACKING AND REPORTING

The decision maker will complete the attached "Information Reporting" form (USIBWC Form 390) and submit it to the EEO officer within 10 business days of the decision. The decision maker should attach to the form copies of all information, including medical information, s/he received as part of processing the request.

The EEO officer will maintain these records for the longer of the employee's tenure with the USIBWC or 5 years.

XI. RELATION OF PROCEDURES TO STATUTORY AND COLLECTIVE BARGAINING CLAIMS

This policy is in addition to statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.

An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must:

For an EEO complaint: contact an EEO counselor in the of Equal Opportunity Office (EEO) within 45 calendar days from the date of receipt of the written notice of denial.

For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or Initiate an appeal to the Merit Systems Protection Board within 30 calendar days of an appealable adverse action as defined in 5 C.F.R. 1201.3.

INQUIRIES

Any person wanting further information concerning these Procedures may contact the EEO office at 915-832-4112

DISTRIBUTION

These Procedures shall be distributed to all employees upon issuance and will be posted in the Directives Folder in Electronic Mail. Copies also will be available in the EEO office, and Human Resources Office. They shall be distributed to all new employees as part of their orientation on their first day of work.